

REMARKS

STATUS OF THE CLAIMS

Claims 1-35 were pending and were variously rejected under 35 U.S.C. §§ 102 and 103. By amendment herein, claims 1 – 14 and 32 – 34 are pending; claims 1, 32 and 34 have been amended, and claims 15 – 31, 35 – 37 have been cancelled, without prejudice or disclaimer. Support of the amendments to the claims can be found throughout the specification as filed, for example, in paragraph [009] and [0024](claim 1); paragraphs [0008], [0022] and [0026] (claims 32 and 34). No new matter has been added as a result of these amendments and entry thereof is respectfully requested. Applicants reserve the right to file one or more continuing applications directed to the subject matter of the cancelled claims at any time during the pendency of this application.

35 USC §102

A. Rejection of claims 1, 3-6, 8, and 10-14 under 35 USC §102(b) over Kuga

Claims 1, 3-6, 8, and 10-14 were rejected under 35 USC §102(b) as allegedly anticipated by U.S. Patent No. 5,686,940 (hereinafter "Kuga") (Final Office Action at page 2, paragraph 5). The Office Action asserts, among other things, that with respect to claim 1, Kuga "discloses a computer system for monitoring the use of a display (1) by a user and having a display (1) performing a task (manipulating images, scrolling, zooming etc.); and a first sensor (2) positioned relative to display and being a distance light sensor." (Final Office Action at page 2, paragraph 5). The Office Action further asserts that: "An analysis of the measurement is output from a computer (5) to a driver circuit (6) for controlling the display (1) according to the detected distance." (Final Office Action at page 3, paragraph 5) As to claim 3, the Office Action asserts that "the display in Kuga's system is LCD." With respect to claims 4 and 11, the Office Action asserts that "the sensor is incorporated into a supporting structure of the display and placed on the top of the display," citing col. 2, lines 48-49. With respect to claim 5, the Office Action asserts that the "CCD is made of a plurality of light sensors (pixels)," citing col. 2, lines 49-55. With respect to claim 6, the Office Action asserts that "the sensor is the imaging sensor (CCD)." Further, with respect to claim 8, the Office Action asserts that "the system comprises a computer (5) for processing inputs from the sensor," citing col. 3, lines 29-43. With respect to claim 10, the Office Action asserts that the "sensor is positioned to monitor the display depending on the display distance from the user." With respect to claim 12, the Office Action asserts that "the user constitutes a remote input device," citing col. 4, lines 22-27, "by controlling various computer related tasks, such as scrolling or zooming, for example, by changing the distance between the display and the user." With respect to claim 13, the Office Action asserts that the "sensor is a distance sensor," citing col. 2, line 48. With respect to claim 14, the Office Action asserts that

“the sensor is a light sensor,” citing col. 2, lines 49-53. The Office Action asserts that “While Kuga’s intentions well may be to avoid using of any input devices, the function of the display in Kuga are controlled by user, who constitutes, in a broad sense, an input device in that case.”

Applicants submit that Kuga does not disclose all of the features of the presently claimed invention. In particular, without conceding the merits of any of the Office Action’s rejections, the stated bases therefor, or the accuracy thereof, the Office Action has failed to show that Kuga discloses “a means for automatically notifying user when user is not at a proper viewing distance” as presently claimed, for example, in claim 1. Further, Applicants submits that the Office Action’s assertion as to claim 11 that Kuga’s sensor is “placed on the top of the display” is inaccurate. Kuga merely discloses “a charged coupled device (CCD),” that “is placed on the LCD 1,” without saying that the CCD is “on top” of the display. (Kuga at col. 2, lines 48-49).

Applicants also disagree with the Office Action’s assertion with respect to claim 12, that the user constitutes a remote input device. The present system with all the claimed elements is an article of commerce that can be sold as such. Kuga’s system or product that can be sold cannot include a user.

In view of the fact that the Office Action has failed to show that Kuga discloses all of the features of the present invention, for example, as claimed in claim 1. Since the dependent claims 3-6, 8, and 10-14 all incorporate the recitations of claim 1 directly or indirectly, Applicants respectfully submit that Kuga is defective as a §102(b) reference against these claims, and request withdrawal of this rejection.

B. Rejection of claims 15 and 17 under 35 USC §102(b) over Fateh et al

Claims 15 and 17 have been cancelled, without prejudice or disclaimer. Rejection over claims 15 and 17 are moot. Withdrawal of this rejection is respectfully requested.

C. Rejection of Claims 18 – 19 under 35 USC §102(b) over NEC Software Ltd (“NEC”) and under 35 USC §102(e) over George (US 6,606,130)

Claims 18 – 19 have been cancelled without prejudice or disclaimer. Rejections over claims 18 and 19 are moot. Withdrawal of this rejection is respectfully rejected.

D. Rejection of Claims 26 and 35 under 35 USC §102(e) over Wong (US 6,690,351)

Claims 26 and 35 have been cancelled without prejudice or disclaimer. Rejections over claims 26 and 35 are moot. Withdrawal of this rejection is respectfully rejected.

E. Rejection of Claim 27 under 35 USC §102(b) over NEC-Okubo, JP 08-292752

Claim 27 has been cancelled without prejudice or disclaimer. Rejection over this claim is moot. Withdrawal of this rejection is respectfully requested.

F. Rejection of Claims 32-34 under 35 USC §102(b) over Wawro

Claims 32-34 as allegedly anticipated by U.S. Patent No. 5,838,424 (hereinafter "Wawro"). The Action asserts, with regard to claim 32 that "Wawro discloses a system for eye examination comprising a display (CRT 54); a first sensor (74) positioned close to the display and being a light sensor (col. 6, lines 56-64); and a software program for processing inputs from the sensor and for displaying a test pattern on the display," citing col. 3, lines 38-55; col. 5, line 58 – col. 6, line 31. As to claim 33, the Office Action asserts that "the test pattern can be an acuity test or a visual field test etc.," citing col. 3, lines 45-55. As to claim 34, the Action asserts that "Wawro teaches a second sensor (76) distinct from the first sensor (74)."

The Official Action has put aside Applicant's arguments distinguishing Wawro because "the features upon which applicant relies are not recited in the rejected claims(s)." (Official Action at page 13) The present claims 32 and 34 each recites the "the distance sensor measures viewing distance and the light sensor measures ambient light. The Official Action has failed to establish that Wawro discloses all the features of the inventions claimed in 32 – 34. Accordingly, Wawro is defective as a §102(b) reference. Withdrawal of the rejection over claims 32 – 34 over Wawro is respectfully requested.

35 USC § 103

A. Kuga in view of Richardson et al. (US 6,433,759)

Claims 2, 7 and 9 were rejected under 35 USC §103 as being unpatentable over Kuga in view of Richardson ("Richardson," US 6,433,759 B1). The Action admits that "Kuga does not disclose a communication link between the system and a computer system accessible by hypertext protocol, or that the sensor is connected to the system through a cable and capable of monitoring blink rate." (Official Action at Page 6, paragraph 13). Yet, the Action asserts "Richard teaches a computer system having light sensors for controlling a computer (FIG. 2), wherein the system is connected to the Internet (col. 4, lines 18 – 31), the imaging sensors (112 and 122) housed in a headset (70) is connected to the computer through a cable (62); and the system is capable of monitoring blink rate (FIG. 18; col 4, lines 38 – 46). The Action further asserts that "It would have been obvious to one of ordinary skill in the art at the time when the invention was made to modify the system of Kuga by the teachings of Richardson by adding the ability to detect a blink rate, since Kuga lends itself conveniently to incorporating this feature by already having built-in imaging sensor for detecting a distance, because it would allow to

emulate “mouse clicks” and provide additional instructions to the computer,” citing Richardson; col. 4, lines 43-46; col. 13, lines 17-62.

Applicants respectfully submit that the Official Action is engaged in unacceptable hindsight reconstruction of Applicant’s invention as the Action has failed to establish, a motivation to combine Richardson and Kuga, *a priori*, in the absence of Applicant’s claimed invention. Failing this, this §103 rejection cannot stand.

Moreover, the focus of Kuga’s invention is on “varying an image signal supplied to the display panel based on the distance detected by the distance sensor” as a means of controlling the displayed image (Kuga at col. 1, lines 53 – 58). “The changeover between the enlargement and the reduction of an image and between the scrolling and the stopping of a text and between the moving display and the stationary display of a moving image is made according to the detected distance. The speed of the scrolling and the speed of the moving image display can stewisely be set according to the detected distance.” (Kuga at col. 1, lines 59 – 65) Richardson, on the other hand, is trying to improve head tracking or gaze point tracking (i.e., gaze of the eye) (Richardson, at col. 1, lines 14 – 16 and 38 – 40). The combination of these two totally different inventions would make a system terribly complicated. The Official Action has failed to show any suggestion or evidence or how the combination of these two systems can work together. Lacking any suggestion or motivation to combine these two references, the presently claimed invention cannot be considered as having been rendered obvious thereby.

Accordingly, this §103 rejection must fall. Applicants request withdrawal of this rejection over claims 2, 7 and 9.

B. NEC in view of Fateh et al. (US 6,076,928)

The Final Office Action has rejected claims 16, 22, 23, 24, 25 and 28 – 31 under 35 U.S.C. 103(a) as being unpatentable over NEC in view of Fateh (Final Office Action at pp 6 – 8, paragraph 14). Rejection over these claims is moot as they have been cancelled without prejudice or disclaimer. Withdrawal of this rejection is respectfully requested.

C. Fateh in view of Jeon (US 5,877,841)

The Final Office Action has rejected claim 20 under 35 U.S.C. §103(a) as being unpatentable over Fateh in view of Jeon (Final Office Action at pp 8 – 9, paragraph 15). Claim 20 has been cancelled without prejudice or disclaimer. Withdrawal of this rejection is respectfully requested.

D. Jeon

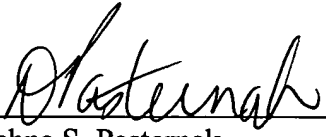
Claim 21 was rejected under 35 U.S.C. §102(a) as being unpatentable over Jeon (Final Office Action at page 9, paragraph 16). Based on the heading on page 5 of the Final Office Action and the substance of the rejection, Applicant assume that this rejection is a §103(a) rejection instead of a §102(a) rejection. In any event, claim 21 has been cancelled without prejudice or disclaimer. Withdrawal of this rejection is respectfully requested.

E. Mitchell et al (US 4,832,419) in view of Fateh

Claims 36 – 37 were rejected under 35 USC §103(a) as being unpatentable over Mitchell et al. in view of Fateh. (Final Office Action at pp. 9 – 10, paragraph 17) Claims 36 – 37 have been cancelled without prejudice or disclaimer. Withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the claims are now in condition for allowance and request early notification to that effect.

By: 
Dahna S. Pasternak
Registration No. 41,411

ROBINS & PASTERNAK LLP
1731 Embarcadero Road, Suite 230
Palo Alto, CA 94303
Tel.: (650) 493-3400
Fax: (650) 493-3440